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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: WT Docket No. 97-82, DA 97-679,
Broadband PCS C & F Block
Installment Payment Issues

Dear Mr. Caton:

I am the Chairman and Chief Executive Officer of U.S. AirWaves, Inc. These titles, however, are largely meaningless, because U.S. AirWaves exists today on paper only. The reasons why U.S. AirWaves is not today a viable C-Block PCS licensee are what cause me to submit these reply comments in the above-referenced proceeding.

As the former President and Chief Executive Officer of the U.S. West NewVector Mobile Communications Group, I have been involved in the development of PCS since 1989. I believed in the vision of competitive mobile telecommunications, provided by entrepreneurial companies, as this wireless opportunity was being developed by the FCC, and I lobbied actively with the FCC and its staff with respect to the rules for PCS and as an advocate for the C-Block PCS auction process.

In 1994, we created U.S. AirWaves to bid in the C-Block auction. We had a strong management team, a solid business plan, and a carefully thought-out approach to the auction, including specific targets and a maximum bid amount for each license on which we were prepared to bid. Because of the team I had put together, and because of our persuasive business plan and disciplined approach to the auction, we were able to attract noncontrolling equity investments from such global corporations as MCI, Sony and Hyundai. With help from these investors and others, U.S. AirWaves made the largest up-front payment of any entrant in the C-Block auction, approximately \$81 million.

From the beginning, a cornerstone of U.S. AirWaves' business approach was compliance with the FCC's rules. We made this commitment to compliance not only because the FCC would enforce its rules, but also because of our own sense of integrity and business ethics. With the assistance of three law firms experienced in communications matters, as well as corporate counsel, we made numerous judgment calls in the structuring of our company and in the development of our approach to the auction; whenever a close question arose, we chose to err on the conservative side. Not once, in any of our discussions with these law firms or others, did we consider the possibility that the FCC might change the rules after the game was over.

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Mr. William F. Caton
July 7, 1997
Page 2

At the auction, U.S. AirWaves was an active and enthusiastic bidder. As auction prices began to rise, we and our investors became increasingly concerned that the debt service obligations imposed by the artificially inflated license prices would keep us from developing a viable PCS business. Finally, in February 1996, we made the painful decision to withdraw from the auction. Our employees – dedicated communications professionals – joined the ranks of the unemployed, our offices were closed, our auction deposit was returned by the FCC, and our investors received their money back, minus some \$8 million that was spent (much of it on regulatory compliance) in our ultimately futile pursuit of PCS licenses.

I recite this background at length because it is directly relevant to the proposals made by several C-Block PCS licenses that they be relieved of the financial burdens imposed by their auction bids. Apart from several other considerations, which I discuss below, the adoption of these proposals or anything like them would be simply unfair, in the extreme, to those of us who entered and exited the C-block auction in good faith, basing our decisions on the rules as they existed. On behalf of the former employees of and investors in U.S. AirWaves, I cannot remain silent in the face of such blatant unfairness.

Apart from the obvious inequity of changing the rules after the game is over, any relief for the C-block licensees would badly damage the reputation for integrity of the FCC. As with any other administrative agency, the FCC must operate within a framework of rules and regulations, adopted through public notice and comment procedures. The rules can, of course, be changed through the same procedures, but doing so in this instance would compromise the FCC's reputation for impartiality among actual and would-be competitors, and for integrity with respect to its rules. Any diminution in the public's respect for the FCC and its integrity and impartiality would constitute a far greater loss – both for the FCC and for the public – than would any loss of revenues to the U.S. Treasury resulting from the taking back of C-Block licenses from those who cannot pay what they have committed to pay.

It is this fact – that licensees committed to pay a certain amount, over a defined period, with clear requirements regarding interest and principal – that is at the heart of my concern about the proposals being considered. When the prices rose too high in the auction, I refused to allow my company to make such a commitment, because I did not believe that we would be able to keep our solemn promise to the U.S. Government. It is inconceivable, at the prices for which licenses went at the auction, that others believed they would be able to keep their promises; instead, what they apparently believed is that, after the auction ended and the licenses were safely in hand, they could come back to the FCC and somehow convince the FCC that their previous promises could be ignored.

A famous Supreme Court Justice, Oliver Wendell Holmes, once wrote: "Men must turn square corners when they deal with their government." These C-Block licensees have stood this wise aphorism on its head, and are begging to be allowed to take just the opposite approach. Instead of turning square corners, they seek to cut every corner, in a desperate attempt to evade simple promises voluntarily made.

Mr. William F. Caton
July 7, 1997
Page 3

The argument that somehow there have been "changed circumstances," which justify a change in the commitments made to the Government, should be rejected out of hand. Virtually all of the changed circumstances cited by the current licensees, such as difficulty raising capital in the financial markets, could have been foreseen, and indeed were foreseen by U.S. AirWaves and its financial advisers. More importantly, arguments about changed circumstances are routinely heard and rejected by commercial lenders, who typically take the position that a promise of repayment made in a legally binding note should be enforced.

By agreeing to become the equivalent of a commercial lender, the FCC has put itself in a position where it must behave like a commercial lender, insisting on the return of the security (here, the licenses) if the promise to repay cannot be kept. To do otherwise, to shift now from a commercial role to a policymaking role – looking only at issues or providing wireless service to the public, without regard for promises made and unfairness to others – would represent a clear misuse of the FCC's regulatory powers in a situation where it chose to act commercially.

The late March decision of the FCC to suspend C-Block installment payment requirements, without any prior procedures at all, was the first instance of such misuse of the Commission's powers. This suspension has already rewarded companies that ran up auction prices far beyond what was economically rational, in the hope that the FCC would somehow bail them out. It is simply unacceptable, from the standpoint of both fairness and the integrity of the Commission's processes, to reward these companies further, giving them relief from their contractual payment commitments while those who played by the rules – the rational participants who could not see any economic viability for their companies and their investors at the prices being bid – are left on the sidelines.

The Commission should immediately stop considering such proposals, and should reverse the decision of the Wireless Telecommunications Bureau to suspend C-Block payments. If these decisions lead to more bankruptcies of C-Block companies, so be it; that is the appropriate, Congressionally-mandated process for dealing with companies that cannot pay their debts. In the bankruptcy process, the Commission should seek quickly to take back its licenses, as it long ago made clear it intended to do if repayment obligations could not be met.

If licenses are taken back and reaucted, it is certain that the licenses will bring in very substantially less money than was raised on paper during the first C-Block auction. Of course, as we have since learned, those paper bids were hardly worth what they were printed on. The reauction would also raise less revenue for the U.S. Treasury than would have been the case had the auction been conducted appropriately by the FCC the first time around (for example by limiting the bidding under the authority of the auction rules). Nonetheless, whatever amount is raised, it is likely to be more than would be raised for the Treasury under the proposals being put forward by today's licensees, whose funds already paid to the Commission should be retained as a means of partially compensating the public for the delay in obtaining more competitive PCS services. A reauction is likely, moreover, to put the licenses in the hands of entities that have rational, well thought-out business plans, with the capability to meet promises and to provide quality service to the public for the long term.

Mr. William F. Caton

July 7, 1997

Page 4

In summary, the FCC has already endangered its reputation for integrity and fairness by suspending the payment requirements and asking for comments on the self-serving whining of companies that made promises to the government and now cannot keep them. It is critical that the FCC restore its reputation by rejecting the arguments and proposals made by these companies, and by reaffirming the integrity of its processes and the inviolability of the promises made to it. In fairness to those of us who played the game by the rules, the FCC should enforce the rules against all of those who chose to play, allowing market forces – rather than regulatory fiat – to select the winners and losers.

Respectfully submitted,



John DeFeo
Chairman
U.S. AirWaves, Inc.